



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL  
(CHARITY)  
GENERAL REGULATORY CHAMBER**

**BETWEEN:**

**ALAN BARTLEY**

**Applicant**

**and**

**THE CHARITY COMMISSION FOR ENGLAND AND WALES**

**Respondent**

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**RULING ON AN APPLICATION FOR AN EXTENSION OF  
TIME**

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**DECISION**

1. The time for the Applicant to file his Notice of Appeal is hereby extended to 16 November 2012, pursuant to rule 5(3)(a) and rule 2 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“the Rules”).

**REASONS**

2. The Applicant is a member of a charitable company known as The Prayer Book Society (1099295) (“the Charity”). On 30 August 2012 the Charity Commission gave its consent, pursuant to s. 198(1) of the Charities Act 2011, for the Charity to amend the objects clause of its memorandum of association. The Applicant now wishes to appeal to the Tribunal against the Charity Commission’s decision to give such consent and has lodged with the Tribunal a Notice of Appeal dated 16 November 2012.

3. **Schedule 6 to the Charities Act 2011 sets out certain rights of appeal to the First-tier Tribunal (Charity). In relation to a decision under s. 198 (1) of the Act, an appeal may be brought by “any other person who is or may be affected by the decision”. I am satisfied that a member of a charitable company falls into this category and so has standing to bring an appeal against the decision.**
4. **Section 316(3) of the Charities Act 2011 provides for Tribunal Procedure Rules to regulate the exercise of the rights of appeal to the Tribunal. Rule 26(1) of the Rules provides that a Notice of Appeal must be sent to the Tribunal so that it is received (a) if the appellant was the subject of the decision, within 42 days of the date when notice of the decision was sent to him or her or (b) if the appellant is not the subject of the decision, within 42 days of the date on which the decision was published. The term “published” is not defined in the Act or the Rules.**
5. **In this case, Mr Bartley was not the subject of the decision, as the application for consent was made by the directors of the incorporated charity. The decision to give consent was communicated to the charity by e mail on 30 August 2012, but was not published more widely by the Charity Commission. The Applicant became aware of the consent given by making an information request under the Freedom of Information Act 2000 to the Charity Commission. He received the relevant information in response to his request on 6 October 2012.**
6. **The Tribunal has enquired of the Charity Commission how a member of a charitable company might be expected to find out that consent had been given under s. 198 (1) of the 2011 Act and thus exercise his or her appeal rights. The Charity Commission helpfully referred the Tribunal to the procedure for amending the memorandum of association in accordance with company law, so that the Applicant as a member of the company would have to be notified of the resolution tabled for the charity’s general meeting.**
7. **It seems to me that such a system of notification relies upon the actions of the charity itself and cannot therefore be said to constitute “publication” within the terms of the Act. The statutory scheme clearly envisages that the Charity Commission itself will “publish” decisions so as to make persons with standing to appeal aware of the fact that an appealable decision has been made. The Charity Commission does not appear to have adopted this practice in relation to decisions under s. 198 (1) of the 2011 Act.**
8. **Rule 5 provides the Tribunal with general case management powers, which must be exercised in a way that gives effect to the overriding objective in rule 2 and the need to deal with cases fairly and justly. Rule 5 (3) (a) permits the Tribunal “to extend...the time for complying with any rule...”**

9. In the unusual circumstances of this case, it is arguable that the Applicant's 42 day period within which to lodge his appeal never even commenced, because he did not fall into either of the categories under rule 26 (1). It therefore seems fair to treat the date of "publication" as being the date on which he received actual knowledge of the Charity Commission's decision, in which case his application would not be out of time. However, for the avoidance of any doubt, I now exercise my case management power to extend the time for filing the Notice of Appeal so that it coincides with the date of his Notice of Application and so allow this appeal to proceed.
10. In granting the Appellant's request for an extension of time (if indeed one is needed) I take into account the fact that the Applicant took his own steps to find out if consent had been given in the absence of publication by the Charity Commission. I also take into account the fact that as soon as he found out about the consent given, the Applicant immediately contacted the Charity Commission and that he applied to the Tribunal within 42 days of the date on which he became aware of the decision.
11. The Respondent must now file a Response in accordance with rule 27 of the Rules, which I direct to be filed within 28 days of receiving this ruling. I would be grateful if the Charity Commission could also alert the Charity to these proceedings so that it may apply to be joined as a party if it wishes.
12. The Applicant has asked for guidance and directions as to the preparation and conduct of his appeal. I propose to deal with these requests in a short directions hearing following receipt of the Response.

**Signed:**

**Dated:**

**Alison McKenna  
Principal Judge**

**7 December 2012**